IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MATTHEW RILEY, **Plaintiff,** **v.** **GARRY MCCARTHY, Superintendent of the Chicago Police Department, and THE POLICE BOARD OF THE CITY OF CHICAGO** **Defendants.**	**NO. 12 CH 01980** **JUDGE MARY ANNE MASON** **CALENDAR No. 8**

MEMORANDUM OPINION AND ORDER

Plaintiff seeks administrative review of a December 8, 2011 decision of the Police Board of the City of Chicago ordering plaintiff's discharge from the Chicago Police Department. Plaintiff seeks to reverse the Board's decision on the grounds that it was arbitrary, capricious, and unrelated to the requirements of service, and that there was no "just cause" for his discharge.

THE RECORD

The facts of the underlying incident that gave rise to plaintiff's discharge are largely undisputed. On November 11, 2004, plaintiff, a member of the CPD's Special Operations Section, participated, with three other officers, in the stop of a vehicle being operated by Miguel Melesio in the vicinity of 2604 N. Laramie in the City of Chicago. Plaintiff and his partner, Officer Hopkins, were in an unmarked police vehicle; two other officers, Officers Herrera and Hurley, were in another unmarked vehicle. Melesio's vehicle was stopped because it had tinted windows.

According to the officers involved, Melesio consented to a search of the vehicle, which

revealed a "trap" – an empty compartment where the vehicle's airbag should have been – often used to conceal drugs. No drugs, drug residue, or drug paraphernalia were found in the trap or the vehicle, although Riley testified that he noticed an odor of cocaine. Despite finding no drugs or other contraband in the car, Riley testified that Melesio consented to a search of his residence located approximately three miles away from the site of the stop.

Melesio was handcuffed and transported to his residence at 4443 W. Haddon by Herrera while Hurley drove Melesio's vehicle. Plaintiff and his partner followed. According to plaintiff's original version of events, Melesio accompanied the other officers inside the building while plaintiff and his supervisor, Sergeant Roscoe (who had arrived on the scene), remained outside.

Melesio later claimed that the officers illegally searched his and other apartments in the building and stole $13,000 in cash, which they neither inventoried nor returned. Based on Melesio's complaint, CPD's Internal Affairs Division opened an investigation.

Plaintiff was called to testify before the IAD on August 11, 2005. Plaintiff was represented by counsel during the interview. According to plaintiff, prior to the interview, Roscoe confronted plaintiff, and instructed him to fabricate the facts of Melesio's detention, including the fact that Roscoe was present at Melesio's residence (which he was not). Although he argued with Roscoe, plaintiff ultimately determined to "bite his tongue" when Roscoe's superior, Lieutenant Blake, witnessed the argument and said nothing to dissuade plaintiff from acceding to Roscoe's demands.

In his IAD interview, plaintiff testified that Melesio consented to a search of both his car and residence, and that Melesio accompanied the officers into the building while plaintiff and Roscoe remained outside. Plaintiff denied the truth of eyewitness reports that Melesio never

entered the residence with the officers, but entered only after he was released without being charged. Plaintiff also denied that he was guarding Melesio in his vehicle while the other officers entered the building.

Late in 2006, Riley saw a news report on the officers charged in the matter and learned of a criminal investigation being conducted by the Office of the State's Attorney. Through his attorney, plaintiff contacted the Assistant State's Attorney assigned to the matter. Plaintiff ultimately provided an accurate account of the events involving Melesio's detention and testified before a federal grand jury in connection with a concurrent federal investigation.

Following completion of the criminal investigations, plaintiff gave a second IAD statement on October 15, 2009.[1] In his second statement, plaintiff acknowledged that Roscoe was never on the scene. In a written statement submitted the same day, plaintiff stated that he felt compelled to give the previous fabricated version of events for fear of retaliation from fellow officers and supervisors, and he feared that his failure to follow Roscoe's orders regarding his original statement could have cost him his Special Operations assignment.

On May 24, 2011, plaintiff was charged with six violations of Rule 14 of the Rules and Regulations of the Chicago Police Department, which prohibits any member of the Department from making a false report, written or oral. Following a hearing at which plaintiff admitted to all six violations, the Board concluded that plaintiff's conduct warranted discharge. The only issues raised by plaintiff here relate to the sanction imposed by the Board for his admitted conduct.

DISCUSSION

The Illinois Administrative Review Law provides the court with jurisdiction to review the Board's decision. 735 ILCS 5/3-104. The facts of this case are largely undisputed, and the issue

[1] Plaintiff's counsel represented that plaintiff offered to give a second, accurate IAD statement earlier, but was told that IAD did not want to conduct a second interview given the ongoing criminal investigations. While the court does not doubt counsel's representation, there is no evidence of this fact in the record.

is whether the facts satisfy the standards for discharge. Given the foregoing, it is appropriate to apply the "clearly erroneous" standard of review because this case is a mixed question of law and fact, examining "the legal effect of a given set of facts." *AFM Messenger Serv., Inc. v. Dep't of Employment Sec.*, 198 Il. 2d 380, 391 (2001) (citing *City of Belvidere v. Ill. State Labor Relations Bd.*, 181 Ill. 2d 191, 205 (1998)). Under the "clearly erroneous" standard of review, the Board's decision is given significant deference, and the court must accept the Board's findings unless the court has a "definite and firm conviction" that the Board made a mistake. *Id.* at 393.

In reviewing the Board's decision to discharge plaintiff, the court must defer to the Board's expertise and experience in determining an appropriate sanction to protect the public. *Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 99 (1992). If the court finds that the Board's sanction is unreasonable, the court cannot modify the sanction. *Obasi v. Dep't of Prof'l Regulation*, 266 Ill. App. 3d 693, 704 (1st Dist. 1994). Rather, the court is limited to reversing and remanding the Board's "decision in whole or in part, and if necessary, identifying issues requiring further hearing and providing proper instructions." *Wesley v. Police Bd. of City of Chi.*, 223 Ill. App. 3d 1042, 1044 (1st Dist. 1991). It is the responsibility of the administrative agency, not the court, to "determine sanctions for individual cases necessary to protect the public." *Albazzaz v. Ill. Dep't of Prof'l Regulation*, 314 Ill. App. 3d 97, 101-02 (1st Dist. 2000).

In light of plaintiff's admission of the Rule 14 violations, the only issue presented is whether the Board's findings support the conclusion that "cause" for discharge exists. *Id.* A finding of "cause" for discharge should only be overturned if it is "arbitrary and unreasonable or unrelated to the requirements of the service." *Id.* "Cause" is defined as "some substantial shortcoming which renders the employee's continuance in his office or employment in some way

detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as good cause for his not longer occupying the place." *Id.* (citing *Fantozzi v. Bd. of Fire & Police Com'rs of Vill. of Villa Park*, 27 Ill. 2d 357, 360 (1963)).

The Board's decision is arbitrary and capricious if the Board: (1) relied on factors that the legislature did not intend for the Board to consider; (2) failed to consider a significant part of the issue; or (3) offered an explanation for its decision that is against the evidence in the record or is "so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 505-506 (1988). The court's review is narrow, and the court should not substitute its own reasoning for that of the Board's unless there is a "clear error of judgment" in the Board's reasoning. *Id.* at 506. The test is not whether the court "would have imposed a lesser sanction," *Obasi*, 266 Ill. App. 3d at 704, and it is not "whether [the] court would conclude in the view of mitigating circumstances . . . that a different penalty would be more appropriate." *Walsh v. Bd. of Fire & Police Com'rs of Vill. of Orland Park*, 96 Ill. 2d 101, 106 (1983) (citing *Sutton v. Civil Serv. Comm'n*, 91 Ill. 2d 404, 411 (1982)).

The Board found that plaintiff's misconduct was serious enough to constitute a "substantial shortcoming," rendering plaintiff's continued service as a police officer detrimental to the "discipline and efficiency of the service" of the CPD, and held that the law recognized such conduct as "good cause" for discharge. The Board's decision is in accord with reported decisions on the issue of a police officer's dishonesty. In such cases, Illinois courts have separated dishonesty into two categories: first, dishonesty that "relate[s] directly to the officer's public duties," which generally warrants discharge; and second, dishonesty that "only relate[s] to internal police administration," which generally does not warrant discharge. *Harder v. Vill. of Forest Park*, 05 C 5800, 2008 WL 4561631, at *8 (N.D. Ill. May 2, 2008) (citing *Kupkowski v.*

Bd. of Fire & Police Com'rs of Vill. of Downers Grove, 71 Ill. App. 3d 316, 324 (2d Dist. 1979)). The Board determined that plaintiff's false statements were material in determining the validity of Melesio's allegations, hindered the IAD's investigation, and provided a potential false cover story for the officers accused of criminal conduct. Thus, plaintiff's false statements fall within the first category of dishonesty that warrants discharge because the statements relate to plaintiff's duties to the public.

Plaintiff claims that his single act of misconduct in providing false statements during the IAD's investigation does not constitute a "substantial shortcoming" or "cause" for plaintiff's discharge. First, plaintiff argues that the Board failed to consider the mitigating factors, including: plaintiff's achievements as a police officer; plaintiff's minor role in the search of Melesio's vehicle and residence; plaintiff's lack of knowledge of the other officers' criminal activity; the peer pressure by plaintiff's superiors; and plaintiff's eventual cooperation in the later criminal investigations.

However, the Board clearly considered the testimony and other evidence plaintiff presented in support of mitigation, and concluded that these factors did not excuse plaintiff's misconduct. The Board considered the testimony and evidence attesting to plaintiff's character and achievements, but determined that "[n]o police officer, even one as highly decorated and contrite as [plaintiff], can be allowed to remain a police officer when he makes numerous material false statements . . ." (Board's Dec. at 7). The Board had discretion in considering this evidence, and the Board was not required to impose suspension, rather than discharge, based on plaintiff's years of good service with the CPD, "even where some of those years are subsequent to the misconduct." *Kappel v. Police Bd. of City of Chi.*, 220 Ill. App. 3d 580, 596 (1st Dist. 1991).

Further, the Board acknowledged that plaintiff was not charged with participating in any of the alleged illegal activity. Plaintiff maintains here that, in addition, he had no reason to suspect illegal activity on the part of his colleagues until he learned of the criminal investigation. But common sense dictates that the circumstances should have aroused the suspicion of an experienced police officer: first, although no contraband was discovered during the search of Melesio's vehicle, the vehicle stop was followed by an alleged consensual search of Melesio's residence nearly three miles away; second, although Melesio allegedly consented to the search of his residence, Melesio was not present during the search, but was detained in plaintiff's vehicle parked in an alley two blocks away; and third, plaintiff, the non-participating officer, was subsequently asked by a superior officer to fabricate his IAD official statement regarding the circumstances of the incident, including who was present during the search. All of these circumstances should have alerted a reasonable police officer of the possibility of improper, if not illegal, conduct by his fellow officers.

The Board concluded that the peer pressure from superior officers did not justify or mitigate plaintiff's conduct because plaintiff knew, or should have known, that being instructed to lie, and proceeding to lie, constituted a serious breach of plaintiff's duties as a police officer. The Board's conclusion is not unreasonable as Illinois courts have held that "[t]rustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, particularly one as a police officer." *Rodriguez v. Weis*, 408 Ill. App. 663, 671 (citing *Vill. of Oak Lawn v. Human Rights Comm'n*, 133 Ill. App. 3d 221, 224 (1st Dist. 1985)). Duties of a police officer include making arrests and testifying in court, and a police officer's credibility is at issue in both the prosecution of crimes and CPD's defense of civil lawsuits. *Rodriguez*, 408 Ill. App. 3d at 671. Thus, a public finding that plaintiff lied during the IAD investigation is detrimental to

plaintiff's "credibility as a witness and as such may be a serious liability to the department." *Id.*

Lastly, the Board determined that plaintiff's eventual cooperation and admission did not mitigate the seriousness of his misconduct. It is not unreasonable for the Board to conclude that plaintiff's single rule violation warrants discharge. *Valio v. Bd. of Fire & Police Com'rs of Vill. of Itasca*, 311 Ill. App. 3d 321, 322-23, 329 (2d Dist. 2000). In *Valio*, a police officer was discharged for violating eleven different rules and regulations of the police department, including lying during a department investigation. *Id.* On review, the court determined that the evidence supported the police board's findings and decision to discharge the police officer based only on the charge of providing false statements during the department investigation.[2] *Id.* at 329. The court held that a single violation of the rules warranted dismissal, and the failure of the police officer "to provide truthful statements . . . could impair the department's ability to properly and fully investigate violations . . . and adversely affect the department's ability to provide efficient service to the community." *Id.* at 331; *see Calomino v. Bd. of Fire & Police Com'rs of Vill. of Schaumburg*, 273 Ill. App. 3d 494, 499 (1st Dist. 1995) ("A single violation of the department rules would authorize dismissal.").

During oral argument, plaintiff's counsel contended that the Board did not apply mitigation standards consistently in this case as compared to similar cases. This is an argument that could have been but was not raised at the administrative level. Counsel's request that the court consider other Board decisions not included in the record runs afoul of the well-established rule that review of administrative decisions is limited to issues raised in the administrative proceedings. *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 212 (2008). Thus, this court cannot consider claimed disparate sanctions for similar offenses as a basis to

[2] Comparable to plaintiff, the police officer in *Valio* was "interrogated, he was advised to answer truthfully and that his statements constituted an official police report." *Valio*, 311 Ill. App. 3d at 329.

reverse plaintiff's discharge.

The Board was responsible for evaluating the seriousness of plaintiff's conduct and determining if it constituted "adequate cause for removing him from the police force." *Caliendo v. Goodrich*, 34 Ill. App. 3d 1072, 1075 (1st Dist. 1975). Here, the Board considered the mitigating factors of plaintiff's achievements, cooperation, and remorse, and concluded that these factors did not warrant suspension rather than discharge. Given the limited scope of this court's review, the Board's determination that plaintiff's discharge was appropriate cannot be overturned.

DISPOSITION

WHEREFORE, for the foregoing reasons, IT IS HEREBY ORDERED that the Board's December 8, 2011 decision to discharge plaintiff is AFFIRMED. There being no other matters in controversy, this is a final and appealable order.

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ENTERED
JUDGE MARY ANNE MASON-1810
NOV 01 2012
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

JUDGE MARY ANNE MASON